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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass. 3/F
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

NOV 25 2003

File [REDACTED] Office: California Service Center Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER [REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: the Director, California Service Center, initially approved the preference visa petition. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore. Approval of the petition was ultimately revoked. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn. The matter will be remanded.

The petitioner is a church. It seeks to employ the beneficiary permanently in the United States as a Christian Education Director. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanies the petition.

The petition was approved on December 18, 1997. Following the beneficiary's filing of an I-485, Application to Register Permanent Residence or Adjust Status, the director notified the petitioner on October 8, 2002 of his intent to revoke the approval of the petition. Stating that the labor certification required a minimum of a baccalaureate degree in theology for the petition, the director noted that the beneficiary was not clearly eligible for this classification. Petitioner was given 30 days from the date of the notice to submit additional evidence. Approval of the petition was subsequently revoked based on the director's failure to receive a response to the Notice of Intent to Revoke by the thirtieth day. The Service Center receipted for the petitioner's response on November 19, 2002.

On appeal, counsel argues that neither the notice nor the coversheet indicated that the response to the notice must be received by the Service Center by the thirtieth day. Counsel states that the petitioner's reply was mailed on November 8, 2002, and he reasonably assumed it would reach the Service Center within three days. Counsel argues that to deny the petition based on the Service Center's receipt of the response "which took an unusual 11 days . . . is unfair and unreasonable." Counsel submits a PS Form 3800, Certified Mail Receipt, and a corresponding PS Form 3811, Domestic Return Receipt, showing the petitioner's response was mailed on November 8, 2002 and receipt acknowledged by the Immigration and Nationality Service (now CIS) on November 19, 2002.

The director's notice afforded the petitioner 30 days from the date of the notice to submit a response. Section (3)(b) of 8 C.F.R. 103.5a states "[w]henver a person has the right or is required to do some act within a prescribed period after the service of a

notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period." Counsel is correct that it is unfair to hold the petitioner accountable for the inexplicable delay in the receipt of the response by the Service Center. Fairness dictates that the response be considered on the merits.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration.